

87300

State of California

A-79-059



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance/Administration ••• Executive/Legal ••• Enforcement ••• Conflict of Interest
(916) 322-5650 322-5901 322-6441 322-6444

April 18, 1979

John B. Clausen
Contra Costa County
Counsel's Office
Post Office Box 69
Martinez, CA 94553

Dear Mr. Clausen:

Recently, I spoke with Mr. Bart Gilbert, Deputy Director of the Department of Public Works for Contra Costa County, with respect to whether Frank Boerger, a consultant to the Department, should be designated in the Department's Conflict of Interest Code. I indicated to Mr. Gilbert that I would write you a letter regarding the matter.

The facts provided to our office indicate that Mr. Boerger has been employed by the Department of Public Works and the County in various consultant capacities since 1969. Currently, Mr. Boerger is advising the Department regarding various water-related construction projects within the County including the San Francisco Bay to Stockton Ship Channel (Baldwin Channel). In addition to these activities, it is contemplated that Mr. Boerger, on behalf of the County, will present recommendations and give testimony before congressional appropriation committees for federal support of water-related projects within the County.

The Political Reform Act requires public officials to be designated in a conflict of interest code if they make or participate in the making of governmental decisions that may materially affect financial interests. Government Code Section 87300 et seq. Public official is defined in Government Code Section 82048 to mean every "member, officer, employee, or consultant of a state or local government agency." (Emphasis added.)

The Commission has clarified the meaning of the term "consultant" as used in the Political Reform Act in Regulation 18700 which provides:

Mr. John B. Clausen  
April 18, 1979  
Page Two

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation of counsel.

2 Cal. Adm. Code Section 18700(a)(2)

Based on my conversation with Mr. Gilbert, it is my understanding that the advice and recommendations provided by Mr. Boerger do not come within any of the exceptions to the definition of consultant as set forth in Regulation 18700(a)(2)(A) and (B). Therefore, if the types of governmental decisions Mr. Boerger participates in as a consultant for the Department of Public Works can materially affect financial interests, his position should be included in the Public Works Department's Conflict of Interest Code.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Dwight Dickerson  
Legal Counsel  
Conflicts of Interest Division

cc: Bart Gilbert  
Virginia Rice  
Lee Sanders

State of California

## Memorandum

To : File

Date : April 18, 1979

79054

From : FAIR POLITICAL PRACTICES COMMISSION  
Dwight Dickerson

Subject: Virginia Rice's Correspondence Referred to us by Bill Tyndall  
on March 14, 1979

Ms. Rice wanted to know under ~~th~~at circumstances would a consultant be designated in a Conflict of Interest Code. I called Ms. Rice on March 26, 1979. I indicated to her what the Commission's standards were for designating consultants in Conflict of Interest Codes. I told her that I would call the Contra Costa County Counsel and discuss with him whether Mr. Boerger, a consultant in the Public Works Department, should be designated in the Department's Code.

DED:nrw

FPPC TRANSMITTAL OF CORRESPONDENCE

CORRESPONDENT

*Virginia Beach, Va. Public Works Dept*

DATE

REC'D. *3-16*

DATED *3-12*

RE:

*Request for Public Works Dept*

ADMINISTRATION

BOB T.  
 LINDA  
 BEV

EXECUTIVE

DAN  
 MICKEY  
 CARLA  
 JEANNE  
 BOB S.

CONFLICTS

TED  
 DWIGHT  
 SARAH  
 ALICE  
 GINA T.

LEGAL

BARBARA  
 LEE  
 PATSY

ENFORCEMENT

BOB B.  
 ROGER  
 BOB G.  
 MARTIN  
 JIM

TA&A

JOHN K.       JAY  
 GINA S.K.     RICH  
 MARYANN       NAN-L.A.  
 BERMA          HELEN-L.A.  
 JOHN G.

INFORMATION

REQUEST FOR ADVICE--MUST BE ANSWERED WITHIN 21 DA

*Lee*, PLEASE:

TAKE WHATEVER ACTION YOU CONSIDER APPROPRIATE

REPLY DIRECT BY *3-30* --COPY TO *Nancy B.*

PREPARE SUGGESTED REPLY AND RETURN TO

COORDINATE REPLY WITH

*Talked to me 3/26*  
*Elizabeth Heavey*  
*415-372-2074*

*Deputy C.C.*

*Virginia Beach*  
*415-237-5972*

*Lee Sander's*  
*462-6350*

*Vernon Cline*  
*415-372-2105*

*490 Winslow St*  
*Bedford City*

*94023*

*365-3942*

common cause

2964 Fillmore Street  
San Francisco, CA 94123 • [415] 567-9799

F P O  
MAR 15 8 45 AM '79

March 14, 1979



Lee -

Can you take a look at this memo from  
one of our best volunteers and evaluate  
her contentions.

She is interested in any informal guidance  
you can offer.

Thanks

Jim Quitsch

6919 Wilson Way  
El Cerrito, CA 94530  
March 12, 1979

TO: *Lee Roseythal*

FROM: *Virginia Rice* (415)  
Virginia Rice, West Contra Costa Common Cause, Tel: 237-5972

SUBJECT: Frank Boerger, Contra Costa County Consultant on water-related projects

ACTION REQUESTED: Your informal comments on whether under Sections 82048, 87100, 87102 (c), and 87302 of the Political Reform Act of 1974, the subject should be covered by the Conflict of Interest Code required of the Contra Costa County Public Works Department and therefore be required to disclose his sources of income.

REFERENCES: For your convenience, Section 82048 gives the definition of public official as a member, officer, employee or consultant of a state or local government agency. Section 87100 states that no public official at any level of... government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Section 87102 (c) states that a financial interest consists of any source of income ...aggregating \$250 or more in value received by or promised to the public official within twelve months prior to the time when the decision was made.

Attachment: List of positions covered in the Contra Costa County Public Works Department Conflict of Interest Code filed with the County Clerk. (Bd. of Sups. Code Reviewing Body)

PROFILE OF SUBJECT: Col. Frank Boerger, U. S. Army Retired; Graduate of Westpoint, 1947; Masters, Civil Engineering, University of Illinois; Resident of San Rafael, Marin County, large family, church worker, telephone (415) 472-1400; District Engineer for San Francisco, Army Corps of Engineers, 1966-69. Well-liked, "everybody's water expert".

County Employment (Contra Costa County)

Public Works Department, first hired August 26, 1969.

<u>1969 - 1974:</u>	Miscellaneous jobs	\$2,700
<u>1973 - 1977:</u>	"County water executive" as staff on loan to West Contra Costa Waste Water Management Agency (CWA) where he was thought of as county staff. (Decisions related to growth)	57,100
<u>1969-1979:</u>	Consultant, Baldwin Ship Channel Project*	44,600
(to date)	Consultant, County Solid Waste Management Board (how paid unknown)	_____
	Consultant, ACCENT (Joint Powers Agency to promote Baldwin Ship Channel* between Solano County, Port of Stockton, Contra Costa County)	_____

(continued)

Contra Costa County paid 50% of  
his \$37,400 salary (or fees) 18,700

Total paid to date by county \$123,100  
(as far as can be determined)

February 6, '79 Board of Supervisors voted to increase  
his "salary" by \$7,500 (4-1 vote)

Possible Conflicts: (with County employment where his job obviously  
is to give unbiased information on technical  
matters to carry out county policy.)

Col. Boerger is a consultant to: (these are matters of public record)

Wickland Oil Company (Interested in extension of Baldwin Channel  
beyond Richmond.)

Shell Oil Company "

Port of Stockton "

U. S. Army Corps of Engineers "

UCO (Urich) Refinery (new) " (It must get permits from County,  
BCDC. Boerger testified on its  
behalf before City of Martinez Council

Dow Chemical Plant "

Port Costa Brickworks (Walked fill permits through Corps of Engineers)

Benicia Industries "

Acme Fill (Dump) (At present applying for county permit to fill an  
additional 200 acres.)

(Industrial Tank) (Has two class I unauthorized hazardous waste ponds  
(related to on Acme Fill border -- no permits from State Water  
above) Quality Board, State Health or County Board)  
Boerger is consultant to County Solid Waste Mgt Bd.)

Norcal (Northern California Ports & Terminals Bureau Inc.) He testi-  
fied on their behalf at BCDC.

(In addition to the above he works closely with the Port of Richmond  
and the Contra Costa County Development Association. He is constantly  
in the company of the leaders and directors of both associations.)

(He either is or works for Harding Lawson Associates.)

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\*The Baldwin Channel is a project to dredge a 45-foot deep channel  
from the Golden Gate to Pt. Edith in Suisun Bay, then a 35-foot deep  
channel from there to the Port of Stockton, with a possible extension

(continued)

to Sacramento. County policy is firmly established only for the section as far as the port of Richmond. The remainder is highly controversial, involving special interests in the millions of dollars versus damage to the delta, Bay, water supply, marshes, etc.

The Board of Supervisors is under great pressure on this subject and is very indecisive about how far the Channel should go and is in need of sound, unbiased advice. Currently, Col. Boerger is thought of as a great "bargain" in that he knows everyone in Sacramento and Washington and therefore can "grease" the wheels for money needed for studies and work. He should be made to disclose his other income in order for a true evaluation to be made of just where his real interests lie.

EXHIBIT "A"

CONTRACOSTA COUNTY  
Contra Costa County  
Public Works Department  
Conflict of Interest Code

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Airport Manager	1 & 2
Assistant & Associate Architectural Engineer	1 & 2
Assistant Building Services Superintendent	3A, B, C
Assistant Chief Operating Engineer	3A
Assistant Civil Engineer	1 & 2
Associate, Assistant & Junior Real Property Agents	1 & 2
Associate Civil Engineer	1 & 2
Associate Mechanical Engineer	1 & 2
Buildings & Grounds Engineer	1 & 2
Building Services Superintendent	3A, B, C
Business Services Assistant	2
Chief Deputy Public Works Director	1 & 2
Chief Gardener	3C
Chief Operating Engineer	3A
Chief Telephone Operator	3M
Custodial Superintendent	3A
Deputy Public Works Director	1 & 2
Drafting Estimator	1 & 2
Engineering Technician IV - Construction	1 & 2
Environmental Control Engineer	1 & 2
Equipment & Materials Dispatcher	3I & K
Equipment Superintendent	3I, J, K
Grounds Maintenance Superintendent	3C
Junior Civil Engineer	1 & 2
Landscape Architect	1 & 2
Materials Testing Engineer	1 & 2

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>
Principal Real Property Agent	1 & 2
Public Works Maintenance Superintendent	3D, E
Public Works Maintenance Supervisor	3D, E
Public Works Director <sup>1</sup>	1 & 2
Administrative Staff Assistants to the Public Works Director and Consultants who provide legal, financial and purchasing advice	1 & 2
Recreation Leader - Service Area	3G, L
Service Area Coordinator	1 & 2
Senior Civil Engineer	1 & 2
Storekeeper	2
Supervising Building Projects Engineer	1 & 2
Supervising Civil Engineer	1 & 2
Supervising Real Property Agent	1 & 2
Supervising Storekeeper	2
Traffic Engineer	1 & 2
Water Quality Control Supervisor	3F

<sup>1</sup>The title Public Works Director includes:

- County Surveyor
- County Road Commissioner
- Ex Officio Chief Engineer Contra Costa County Flood Control and Water Conservation District
- Engineer Ex Officio Contra Costa County Sanitation Districts
- Chief Engineer Contra Costa County Water Agency
- Ex Officio Chief Engineer Contra Costa County Storm Drainage Maintenance District
- Ex Officio Chief Engineer Contra Costa County Storm Drainage District